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PLEASE REPLY TO
NEW JERSEY OFFICE

July 23, 2012

VIA ECF

Hon. Madeline C. Arleo, U.S.M.J.
United States District Court
Martin Luther King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: Baseprotect USA, Inc. v. SWARM #2FB37 and John Does 1-X
Civil Action No.: 2:11-cv-7290

Dear Judge Arleo:

Plaintiff Baseprotect USA, Inc. respectfully submits this letter memorandum in lieu of a brief in opposition to the motion of John Doe #8 (**ECF Document No. 12**) in the above-captioned matter seeking to quash a subpoena issued to an Internet Service Provider (ISP), dismiss the suit against the Movant, and sever the Doe Defendants. We note for the Court that this Movant filed a letter (**ECF Document No. 14**) that appears to respond to our filed letter (**ECF Document No. 13**). However, our filed letter is in response to a different motion on this docket and was not directed at this Movant.

Movant's motion is copied from the blog "dietrolldie.com." The facts recounted there even if true – which they are not – do not represent either the Movant's own experience or even his or her own work. They are the musings copied from a Bit Torrent activist who has spun a fantastic tale and which the Movant simply copied and filed.

While Movant is certainly free to use a template motion – and we are aware of Movant's status as a *pro se* litigant – the facts asserted in the motion are both uncertified and not within Movant's personal knowledge. By Movant's own admission, his identity has not been revealed to our office. Therefore, our office could not have had any dealings with Movant in relation to this case.

Hon. Madeline C. Arleo, U.S.M.J.

July 23, 2012

Page 2

Baseprotect stands on its rights under the Federal Rules of Civil Procedure. A motion must be supported by facts asserted in an affidavit or declaration. Unless the assertion of fact is under oath or subject to penalty of perjury, it must be ignored.

A few points should be noted, however.

- The assertion that the case is without factual basis is false. This case seeks injunctive and monetary relief as a result of the illegal distribution of a single copy of the copyrighted movie "Weekend" by the Swarm and its operators. Each putative defendant has been identified as a member of the Swarm and a portion of the work was downloaded from a computer connected to the Internet from that account.
- This firm has never dunned any defendant, nor even initiated telephone contact unless we were first contacted and were responding to a request that we call. We send demand letters that are accurate and fair. We do not harass or retaliate, and we respect the potential defendants' rights to deny the claims and proceed to discovery and trial. (On the other hand, defendants having been documented" distributing a pirated coy of the work from their Internet account, there is little probability of mounting a meritorious defense.)
- The procedures used by Baseprotect represent the industry standard and are accurate and reliable. They conform in all material respects to the standards of the Motion Picture Association of America and the Recording Industry of America for torrent monitoring and documentation of illegal distribution.

In the event that that this or any other Movant makes an application based on facts that are actually within their own experience and knowledge – as opposed to cutting and pasting the musings of some other author from the Internet – we are prepared to submit appropriate opposition on the merits. This application, however, fails to meet the most basic requirement of the Federal Rules of Civil Procedure and must be summarily denied.

Hon. Madeline C. Arleo, U.S.M.J.

July 23, 2012

Page 3

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay R. McDaniel". The signature is written in a cursive, flowing style with a large initial "J" and "M".

Jay R. McDaniel